

DUGAR ELECTRONICS
v.
COLLECTOR OF CENTRAL EXCISE, CALCUTTA

NOVEMBER 21, 2002

[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

Central Excise and Salt Act, 1944 :

S.s. 4(1) (a) and (b)—Excisable goods—Valuation of—For purposes of charging excise duty—Tape recorders manufactured by assessee—Moulds and other parts got prepared by 'P' at its cost from third parties and supplied to assessee free of cost—Price of tape recorders declared by assessee not accepted by Revenue—Tribunal opined that price declared by assessee was not 'full commercial value'—It fixed the price of goods at the rate at which 'P' sold the same to its dealers and remitted the case to adjudicating authority as in its opinion assessee was entitled to certain deductions which were not allowed—Held, the price fixed by the Tribunal cannot be sustained—Since the assessee itself has stated that provisions of s.4(1)(a) are not applicable, price has to be fixed under s.4(1)(b) in accordance with Central Excise (Valuation) Rules—Tribunal has not fixed the price under any of the Rules—Assessing authority would determine the price accordingly u/s.4(1)(b) read with the Rules considering the question of permissible deductions as per directions of the Tribunal—Central Excise (Valuation) Rules, 1975.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9918 of 1995.

From the Judgment and Order dated 31.1.1994 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/ 3699/88-A in F.O. No. 38 of 1994-A.

Vikram Nankani, Ms. Vanita Bhargava, Ms. Bina Gupta and Ms. Divya Roy, for the Appellant.

A.K. Ganguli, Rajiv Nanda and B. Krishna Prasad, for the Respondent.

The following Order of the Court was delivered :

A The assessee is in appeal against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, No.38/94-A, dated January 31, 1994.

B The assessee is the manufacturer of tape recorders in the brand name of 'Philips'. Moulds and some other parts of the tape recorders were got prepared by Pieco (Philips) at its costs from third parties and supplied free of costs to the assessee. The assessee declared the price of tape recorders which was not accepted as correct assessable value of goods by the Excise authorities as well as the Tribunal. The Tribunal found that the price declared by the assessee was not full commercial value because the moulds etc. which were got produced by Pieco and were supplied free to the assessee resulted in an element of consideration passing from Pieco to the assessee. The Tribunal noticed that the assessee was entitled to certain deductions which were not allowed to it, and, for that purpose, it remanded the case to the adjudicating authority. Having so done, the Tribunal fixed the price of the goods at the rate at which Pieco (Philips) sold it to its dealers. Aggrieved by these two findings of the Tribunal, the assessee has come up in appeal to this Court.

D Mr. Vikram Nankani, the learned counsel appearing for the appellant, contends that the rejection of the price declared by the appellant is illegal and unsustainable. We are afraid we cannot accept the contention of the learned counsel for the simple reason that it is not disputed that for the development of moulds, Pieco played a dominant role. The assessee did not invest for the development of the moulds. The cost was incurred by Pieco. The assessee got them free from Pieco. These facts do support the finding of the Tribunal that the transaction does not represent 'full commercial value'.

F Learned counsel further contends that fixation of assessable value by the Tribunal at the rate at which Pieco sold the goods to its dealers, is not justified. Having heard Mr. Ganguli, learned senior counsel for the respondent, we are of the view that the complaint made by the appellant is justified. No provision is brought to our notice under which the price charged by the buyer to its dealer can be taken, *ipso facto*, as assessable value under Section 4 of the Central Excise & Salt Act, 1944 and/or the Rules made thereunder. The assessable value has to be fixed under Section 4 of the Act and the Rules, which may be more or less or the same as fixed by the Tribunal. Section 4, insofar as it is relevant for the purposes, reads as follows:

H "Section 4. Valuation of excisable goods for purposes of charging of duty of excise.-(1) Where under this act, the duty of excise is chargeable on any excisable goods with reference to value, such value

shall, subject to the other provisions of this section, be deemed to be-

(a) The normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:

Provided that -----

(i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers:

(ii) Where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons), who sell such goods in retail;

(b) Where the normal price of such goods is not ascertainable for the reason, that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) to (4) xxx

xxx

xxx

In view of the submission of learned counsel for the respondent that the appellant itself has stated that clause (a) of sub-section (1) of Section 4 does

- A** not apply, the only provision under which the price can be fixed is clause (b) of sub-section (1) of Section 4 of the Act. That could be done in accordance with the Central Excise (Valuation) Rules, 1975. From a perusal of the order under challenge, it does not appear that the Tribunal proceeded to fix the price under any of the Rules. In the circumstances, we are of the view that the price of goods fixed by the Tribunal cannot be sustained. As the case was remanded taking note of the complaint that permissible deductions were not allowed to the assessee and the determination of the price by the Tribunal is found by us to be without any legal basis, we leave it to the assessing authority to determine the price in accordance with the afore-mentioned provisions of law.
- B**
- C** We, therefore, set aside the order under challenge insofar as it relates to fixation of the price for the purposes of assessable value. The Collector, Central Excise, shall now determine the assessable value duly considering the question of permissible deduction as per the direction of the Tribunal and in accordance with the law, namely, under Section 4(1)(b) of the Act read with the Rules in the light of what is stated above.
- D**

The appeal is accordingly disposed of.

There shall be no order as to costs.

E R.P.

Appeal disposed of.